



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

MLM:JAJ:ZA
F.#2006R00688

271 Cadman Plaza East
Brooklyn, New York 11201

December 23, 2010

BY HAND AND ECF

The Honorable Dora L. Irizarry
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Abdel Nur
Criminal Docket No. 07-543 (DLI)

Dear Judge Irizarry:

The government respectfully submits this letter, with the consent of the defendant, regarding the public access issues that may be raised in connection with conducting the defendant's sentencing hearing outside the courtroom. For the reasons stated below, the parties respectfully request that the Court place on the electronic docket in this matter the sentencing proposals it is considering and solicit the views of the public and the press on those proposals.¹

At the status conference held on December 17, 2010 in this matter, the Court directed the parties to prepare a joint submission, due January 3, 2011, regarding the constitutional implications of the Court's proposals as to how conduct the defendant's sentencing hearing. Those proposals are: (1) to conduct the hearing in the presence of all the parties at the Metropolitan Detention Center ("MDC") and provide a live video broadcast of the proceedings in the courthouse; (2) to conduct the hearing in the courtroom but allow the defendant and one defense attorney to appear by video broadcast from the MDC; and (3) to conduct the hearing with all parties present at the courthouse and arrange for either FBI agents, by takeout order, or the U.S. Marshals Service to provide the defendant with transportation tailored to his health needs.

¹ Prior to filing, a copy of this letter was provided to defense counsel, who has approved its contents.

As the Court is aware, the right to a public trial is guaranteed to the defendant by the Sixth Amendment and to the press and the public by the First Amendment. See, e.g., In re Oliver, 333 U.S. 257, 266-73 (1948) (Sixth Amendment); Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 603 (1982) (First Amendment). The Second Circuit has held that in order to allow the press and the public to vindicate their qualified First Amendment rights, a district court should, to the extent possible, provide public notice of the fact that it is considering partially closing the courtroom for certain proceedings. See, e.g., United States v. Alcantara, 396 F.3d 189, 199-200 (2d Cir. 2005). This notice provides the press and public with a "meaningful opportunity [to] protest" any restrictions that they believe might violate their constitutional rights. Id. at 199.

In accordance with that case law, because two of the proposed options involve some limitation of public access, the parties write to respectfully suggest that the Court docket the three sentencing options it is considering and solicit the views, including any objections, of any interested person or party on those options. The parties propose that the Court set a deadline of December 31, 2010 for any member of the press or public to make their views known to the Court. That would in turn allow the parties sufficient time to incorporate a response to those views in the joint January 3, 2011 filing.

Respectfully submitted,

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